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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

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| Estate of ANTONE ELIAS<br>NINO, Deceased.  | B281871   |
| JEFFREY SIEGEL, as<br>Administrator, etc., | (Los Angeles County<br>Super. Ct. No. BP151261) |
| Petitioner and Appellant,                  |   |
| v.   |   |
| KAMAL BILAL,                               |   |
| Objector and Respondent.                   |   |

APPEAL from orders of the Superior Court of Los Angeles County. Clifford Klein, Judge. Affirmed.

Jacob N. Segura and Terry M. Magady for Petitioner and Appellant.

Robert M. Ungar for Objector and Respondent.

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Petitioner and appellant Jeffrey Siegel is the administrator of the estate of Antone Elias Nino (decedent). Mr. Siegel (appellant) appeals from the probate court's denial of his Petition for Application of Sale Proceeds and Determination of Expenses of Administration pursuant to Probate Code sections 10361 and 10361.5, and the denial of his petition for order conveying property pursuant to section 850.

We affirm both orders.

### **FACTUAL AND PROCEDURAL BACKGROUND**

Prior to his death, decedent and his ex-wife (Nasrin Nino) owned and operated several gas stations. In addition to operating the retail businesses at the stations, decedent and his ex-wife also owned the real property on which some of the stations were located, including the station on Sherman Way in Reseda (the Reseda Property), the station on Nordoff Street in Northridge (the Northridge Property), and one on Vanowen Street in Canoga Park (the Canoga Park Property).

During their marriage, decedent and his ex-wife held title to their gas station properties as trustees of a marital trust. In 2012, decedent's wife filed for divorce. A final judgment of dissolution was entered in January 2013. The dissolution judgment provided, in relevant part, as follows:

“[T]he parties are equally involved with the ownership, operation, and the business of several retail gasoline stations and a gasoline distribution company. By stipulation, the parties agree to continue in the businesses together as equal partners as Tenants in Common. Each party shall be responsible to carry out their respective duties and to contribute to the business utilizing their best efforts to perpetuate the business for the benefit of both parties. [¶] The business consists of several retail gas

stations, some of which are in partnerships, and three of which include the parcels of real property on which they are located. Each party shall utilize their best efforts to continue the business and share the net income equally with distributions being made monthly to each party. The parties shall share all books and records of the business in order to keep each of them well informed of the day to day activities of the businesses. The parties shall maintain joint business bank accounts and shall provide full access to the other party.” The judgment of dissolution identified the Reseda, Northridge and Canoga Park Properties as the businesses to be jointly operated by decedent and his ex-wife as equal partners. It further specified that the parties were required to “execute any documents required to transfer their community property ownership interest into the status of Tenants in Common.”

However, when decedent died on January 30, 2014, a little more than a year after entry of the judgment of dissolution, the deeds transferring title had not been recorded. Title to the properties remained in the name of the marital trust.

In April 2014, decedent’s adult daughter, Jasmine Nino,<sup>1</sup> filed a petition for probate of will and requested appointment as personal representative of the estate. Notice of the initiation of the probate proceedings was served and published in accordance with the Probate Code.

On May 15, 2014, objector and respondent Kamal Bilal (respondent), a former business partner of decedent, filed objections to Jasmine’s petition on the grounds of incompetence

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<sup>1</sup> Because of the common surname with decedent’s ex-wife, we refer to decedent’s daughter by her first name for clarity.

and conflict of interest. Respondent identified himself as a creditor of the estate, a party to shareholder agreements with decedent with a right to acquire decedent's interests in various California corporations, and a plaintiff in a pending lawsuit against decedent.

Jasmine was not appointed personal representative. Rather, on May 16, 2014, the court (Hon. Reva Goetz) granted the ex parte petition of Ellie Page to be appointed special administrator of the estate with the following limited powers: "to refinance the following estate properties and to enter into agreements with the lien holders on the subject real properties as necessary to accomplish said refinance." The identified properties were listed as "[a]n undivided one-half interest" in the Reseda Property, "[a]n undivided one-half interest" in the Northridge Property, and "[a]n undivided one-quarter interest" in the Canoga Park Property. The order further stated that the special administrator was "not authorized to take possession or control of any assets." Ms. Page's special appointment expired May 22, 2014.

Ms. Page did not accomplish the refinance of the properties before her special appointment expired. Three weeks later, on June 5, 2014, the court (Hon. David Cowan) granted the ex parte petition of Jason Rubin to be appointed special administrator of the estate with the following limited powers: "to re-finance real property which the estate has an interest in" on terms to be approved by the court, and the right to "[c]ontact life insurance companies." Mr. Rubin was also granted "full and complete access and the right to inspect to *[sic]* all books and records which [decedent] would have been entitled to, including tax returns, life insurance policies, records and documents pertaining to any

business interest which [decedent] held, such as corporations, partnerships, or other business entities.”

On June 18, 2014, respondent filed a verified creditor’s claim asserting he was owed over \$1.9 million from decedent’s estate.

In July 2014, Mr. Rubin filed a status report documenting his investigation of the assets and liabilities of the estate. Among other things, Mr. Rubin documented his conversations with respondent, decedent’s “former business partner” and a creditor of the estate, as well as his ongoing efforts to refinance the Reseda Property and the Northridge Property in order to avoid foreclosure on those properties. A copy of Mr. Rubin’s status report was served on respondent. Mr. Rubin’s special appointment, originally set to expire in July, was extended through August 15, 2014.

On August 26, 2014, the court (Hon. David Cowan) appointed Jasmine as special administrator, with powers expiring on November 13, 2014. The order stated that title “to the estate’s 50% interest” in the Reseda and Northridge Properties was to be taken “in the name of [decedent’s estate].” Jasmine was granted authority to sign any documents necessary to complete the pending refinance of those two properties.

We refer to the May 16, 2014, June 5, 2014, and August 26, 2014 orders appointing successive special administrators collectively as the Prior Orders.<sup>2</sup>

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<sup>2</sup> Appellant refers to four prior orders, including a May 29, 2014 note in the probate file regarding Special Administrator Rubin. We consider only the three formal orders appointing the three successive special administrators.

After Jasmine's appointment, decedent's ex-wife, as the sole remaining trustee of the marital trust, executed quitclaim deeds transferring title to the Reseda and Northridge Properties from the marital trust as follows: a 50 percent interest to herself as an individual and a 50 percent interest to Jasmine as special administrator of decedent's estate as tenants in common. The deeds were recorded on October 1, 2014, as part of the estate's efforts to finalize the refinancing of both properties.

On May 27, 2015, the court (Hon. Clifford Klein) appointed appellant as administrator of decedent's estate. Judge Klein presided over all further substantive proceedings in the action.

Appellant engaged the services of a real estate brokerage firm to pursue a sale of the estate's interests in the Reseda and Northridge Properties. Appellant, on behalf of the estate, entered into an agreement for the sale of the two properties to Whittington Investments, Inc., the management company that had been retained to operate the gas stations.

Appellant filed a report of sale and petition for order confirming sale with respect to the Reseda Property, and a separate petition with respect to the Northridge Property.

In December 2015, respondent, as objector, filed an opposition to both petitions on the grounds the properties were assets of the postmarital business partnership between decedent and his ex-wife, and not property of the estate. Respondent claimed to be a creditor of both decedent and the partnership. Respondent alleged that appellant was "acting in collusion" with decedent's ex-wife to disregard the requirements for winding up the partnership and paying debts. This was the first time respondent raised the objection that the gas station properties

were not properties of the estate, but were properties of a business partnership.

At the April 2016 hearing on appellant's petitions, the court and counsel discussed respondent's claim that the properties belonged to the postmarital partnership and not decedent's estate. The court deferred a ruling on respondent's objection and proceeded with the sale, stating "there's no finding on [respondent's] issues right now. [Respondent] can make his objections and arguments in court." The court then proceeded with a public auction for the purchase of the two properties.

Whittington Investments was the only bidder and the court accepted the \$2.6 million bid made by Whittington Investments to purchase the estate's 50 percent interest in both the Reseda Property and the Northridge Property (\$1.3 million for each property). The court reserved a determination as to how the sale proceeds (\$350,000) would be applied, directing appellant to file a petition pursuant to Probate Code section 10361. The hearing was scheduled for June 14, 2016. The court signed orders confirming the sale of both properties.

Appellant filed a Petition for Application of Sale Proceeds and Determination of Expenses of Administration pursuant to Probate Code sections 10361 and 10361.5 (Proceeds Petition). The Proceeds Petition sought an order distributing the proceeds from the sale of the Reseda and Northridge Properties in accordance with section 10361. Appellant also filed a Petition for Order Conveying Property pursuant to section 850 (Section 850 Petition), seeking an order determining the estate's ownership interest in the Canoga Park Property. The rulings on these petitions are the subjects of this appeal.

At the hearing on June 14, 2016, appellant, as well as several creditors of the estate, argued the court could not now rule that the properties did not belong in the estate, but were assets of the partnership, because the court was bound by the Prior Orders permitting the refinancing and encumbrance of the properties with new deeds of trust, and the sale of the Reseda and Northridge Properties.

At the conclusion of the hearing, the court granted appellant's Proceeds Petition in part. Based on the stipulation of "all counsel," the court ordered appellant to pay, from the sale proceeds, the lien of the Franchise Tax Board "in the amount of \$15,732.15 in order to allow for the sale of the propert[ies]" to be finalized. The tax lien was the only encumbrance Whittington Investments, as buyer, was unwilling to assume. The order expressly stated it was "made without prejudice to partnership creditors claims and estate creditors claims." The court further ordered appellant to execute quitclaim deeds conveying the estate's title in the Reseda and Northridge Properties to Whittington Investments, and to file proof of recording by July 22, 2016. The other matters raised in appellant's Proceeds Petition, along with appellant's Section 850 Petition, were continued for hearing three times and heard on December 6, 2016.

At the December 6, 2016 hearing, the court rejected appellant's argument that it was bound by the Prior Orders. The court denied appellant's Proceeds Petition and Section 850 Petition. The court found the Reseda, Northridge and Canoga Park Properties "are partnership properties and therefore any debts to the partnership which would include creditor's claims against the partnership, if valid, would be paid before the priority



order designated in Probate Code section 11420 based on *Yahr-Donen v. Crocker* (1947) 80 Cal.App.2d 675.”<sup>3</sup> The court’s order further noted that section 9651, subdivision (d) “could still apply if, in good faith,” the estate believed it had possession of the three gas stations.

Appellant appealed from the court’s orders denying his petitions.<sup>4</sup>

### DISCUSSION

Appellant contends the Prior Orders were final, appealable orders pursuant to Probate Code section 1300 and therefore res judicata barred the court from deciding the properties were partnership assets. Appellant’s theory is that the court authorized the special administrators to refinance, encumber and sell the properties; acts the estate could not engage in without a lawful interest in the properties. When the time to appeal expired as to each of those orders, they became final as against “the entire world.” Appellant maintains that respondent’s

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<sup>3</sup> See *Yahr-Donen Corp. v. Crocker, supra*, 80 Cal.App.2d at pages 678-679 (partnership is dissolved but not terminated by death of one of two partners and continues until its affairs are completely wound up; rights of creditor of the dissolved partnership remain as if there had been no dissolution; debt that remained unsatisfied at death of one partner becomes the debt of the surviving partner and of the estate of deceased partner; surviving partner having failed to pay, partnership creditor was justified in filing its claim in the estate to be paid in the course of administration).

<sup>4</sup> The denial orders were originally entered February 21, 2017, but were subsequently amended nunc pro tunc on April 5, 2017, because of errors in the language of the original orders.

belated argument that the properties were not estate assets, but assets of a purported postmarital business partnership between decedent and his ex-wife, was an improper collateral attack on the Prior Orders. According to appellant, the court's order endorsing respondent's collateral attack on the Prior Orders and express findings that the properties were partnership assets, and not estate assets, was without jurisdiction and void, and therefore must be reversed.

We agree the Prior Orders were final, appealable orders, but otherwise find no merit to appellant's argument the probate court acted in excess of jurisdiction in denying his Proceeds Petition and Section 850 Petition.

#### **1. Appealability of the Prior Orders**

"Generally, rulings in probate proceedings are not appealable unless expressly made appealable by statute." (*Estate of Martin* (1999) 72 Cal.App.4th 1438, 1441-1442.) Probate Code section 1300 authorizes an appeal from "the making of, or the refusal to make" an order "[d]irecting, authorizing, approving, or confirming the . . . encumbrance . . . of property" or an order "[d]irecting or allowing payment of a debt." Because the Prior Orders granted special powers to the special administrators to refinance the debts on the properties in order to prevent foreclosure, thereby paying off the existing loans and encumbering the properties with new mortgages, we conclude the Prior Orders were appealable under section 1300.

It is undisputed that none of the Prior Orders was appealed and therefore became final.

In his opening brief, appellant argues respondent failed to appeal the Prior Orders and is thereby bound by them. In his reply brief, appellant contends respondent failed to make himself

a party to the proceedings and therefore lacked standing to appeal the Prior Orders, but is nonetheless bound by them. Appellant forfeited any consideration of the argument raised for the first time in his reply brief. In any event, we attribute no significance to the question whether respondent had standing yet failed to appeal the Prior Orders. As we explain, the finality of the Prior Orders in no way precluded the probate court from subsequently considering and resolving whether the Reseda, Northridge and Canoga Park Properties were assets of the estate or of the postmarital partnership.

## **2. The Finality and Preclusive Effect of the Prior Orders**

Because of the nature of probate proceedings, final orders during the course of the administration are given preclusive effect as to any later orders. “Each separate proceeding in the probate of an estate culminating in a decree authorized by the Legislature and thus within probate jurisdiction, results in a judgment and, when it becomes final, that judgment is binding on all interested parties, *as to the matters that it determines.*” (*Stevens v. Torregano* (1961) 192 Cal.App.2d 105, 115-116, italics added; see generally *Estate of Radovich* (1957) 48 Cal.2d 116, 120-121.)

Upon the opening of probate, “the estate of a decedent passes into the custody of the state, to be by its agencies and instrumentalities *managed* until creditors are paid and the rights of devisees and heirs are established. While it reposes in such custody the superior court sitting in probate is authorized to determine the validity of wills and of creditors’ claims, the rights of rival heirs, the necessity of sales and other incidents of winding up an estate. Each act of the court is an independent

step in the administration. A decision as to one is not an adjudication of the others and does not divest the court of the power to hear and determine problems that are collateral to the proceeding in which an appealed order has been rendered.” (*Estate of Kennedy* (1948) 87 Cal.App.2d 795, 797-798.)

Appellant contends the final Prior Orders necessarily included a determination that the properties were estate assets, and the court was therefore precluded from later finding the Canoga Park Property and the proceeds of the sale of the Reseda and Northridge Properties were partnership assets. Appellant overstates what was determined by the probate court in issuing the Prior Orders.

The Prior Orders are final and have preclusive effect, but only as to those matters actually determined. (*Stevens v. Torregano, supra*, 192 Cal.App.2d at pp. 115-116.) When the probate court appointed the special administrators at the initiation of the probate proceedings, it was not then tasked with determining the propriety of the distribution of any assets or any adverse claims of title. The court was only asked to appoint special administrators on an emergency basis and to grant such powers as would allow for the preservation of the estate for the benefit of all interested parties. In that regard, the court permitted the refinancing of the properties to preserve those assets until such time as the court could decide the rights of creditors, heirs and any other claimants.

When the Prior Orders were issued, the court was not asked, and did not resolve, the issue of whether the postmarital business partnership had any lawful interest in properties over which the estate had asserted ownership. The Prior Orders therefore did not preclude the probate court from resolving those

claims of ownership and related distribution issues in ruling on appellant's Proceeds Petition and the Section 850 Petition.

The probate court is vested “with broad equitable powers. [Citations.] The probate court has jurisdiction to determine whether property is part of the decedent’s estate or living trust. [Citations.] . . . ‘The probate court has general subject matter jurisdiction over the decedent’s property and as such, it is empowered to resolve competing claims over the title to and distribution of the decedent’s property. [Citations.]’ [Citation.] The probate court may apply general equitable principles in fashioning remedies and granting relief.” (*Estate of Kraus* (2010) 184 Cal.App.4th 103, 114.)

The Probate Code expressly provides a procedure for the resolution of adverse claims of ownership to real and personal property being held by the estate. (See, e.g., § 850.) The statutory scheme also relieves a personal representative, acting in good faith, of liability for taking possession of real and personal property that is subsequently determined to belong to third parties. (§ 9651, subd. (a)(2).)

Appellant’s res judicata argument is inconsistent with this statutory scheme and the inherent authority of the probate court. It would mean that any time emergency measures are taken by a special administrator to preserve assets believed to be a part of the estate, subsequent proceedings to resolve distribution issues or adverse claims of title would be foreclosed.

### **DISPOSITION**

The probate court’s order denying petitioner and appellant Jeffrey Siegel’s Petition for Application of Sale Proceeds and Distribution of Expenses of Administration is affirmed.

The probate court's order denying petitioner and appellant Jeffrey Siegel's petition for order conveying property pursuant to Probate Code section 850 is affirmed.

Objector and respondent Kamal Bilal is awarded costs of appeal.

GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

STRATTON, J.